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TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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OFFICE OF PETITIONS

In re Application	:	
Malik, et al.	:	
Application No. 09/927,597	:	DECISION ON APPLICATION
Filed: August 10, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 020552-007100US	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed December 20, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred sixty-three (163) days to one hundred seventy-four (174) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred seventy-four (174) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 22, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred sixty-three (163) days. On December 20, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one hundred seventy-four (174) days.

Applicants assert entitlement to a patent term adjustment of one hundred seventy-four (174) days on the basis that the PTO improperly assessed Applicants a delay of eleven (11) days for responding to a Notice to File Missing Parts mailed on October 4, 2001. Applicants assert that they timely filed a response on January 3, 2002, within the three month period pursuant to 37 C.F.R. 1.704(b).

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero one hundred sixty-three (163) days based on an adjustment for PTO delay of two hundred sixty-six (266) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delay of sixty-one (61), thirty-one (31), and eleven (11) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 11 days is at issue.

The adjustment of 11 days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on October 4, 2001. Applicants timely filed a complete response to this notice on January 3, 2002. As this was timely pursuant to 37 CFR 1.704(b), no applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one hundred seventy-four (174) days** (266 days of PTO delay and 92 days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

¹ Applicants filed the application for patent term adjustment contemporaneous with the filing of the issue fee.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen